



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### Advisory Opinion

April 18, 2002

AO-02-15

William P. Lee, Esq.  
The Conservation Campaign  
33 Union Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

Re: Ballot Question Committee

Dear Mr. Lee:

This letter is in response to your request for guidance regarding “Citizens for Community Preservation” (the “Committee”), a ballot question committee organized with OCPF on August 22, 2001 by The Conservation Campaign (“TCC”) to support the adoption of the Community Preservation Act (“CPA”) in communities throughout the commonwealth.

TCC is an organization registered with the Internal Revenue Service to support ballot questions that create funds for parks and open space conservation. It is a member of the Executive Committee of the Community Preservation Coalition (the “Coalition”), a Massachusetts coalition of conservation, housing and historic preservation organizations that encourage municipalities in the commonwealth to pass the CPA.

TCC and the Coalition intend to raise funds to contribute to local CPA campaigns, as well as make expenditures to educate the public about the CPA and to determine the feasibility of its passage in particular municipalities. The proceeds of foundation grants may be used to accomplish the latter. You have indicated that much of TCC’s and the Coalition’s efforts will involve statewide activity pertaining to the CPA generally and will take place before questions are placed on many local ballots.

TCC and the Coalition seek to accomplish their political goals through the Committee. You envision the Committee reporting its campaign activity in each municipality where the Committee makes an expenditure. These reports, which would be filed in accordance with the local filing schedule in each community, would include all of the Committee’s contributions and expenditures, not

only those affecting the local race.<sup>1</sup> You intend to provide the local election officials with a cover memorandum highlighting the Committee's expenditures in that particular community.

Finally, you have proposed that the Committee file annual reports with this office to disclose its activity for the calendar year. In fact, the Committee filed such a report for 2001 with OCPF on January 17, 2002.

#### QUESTION

Are the Committee's proposed activities as set forth above consistent with the campaign finance law?

#### RESPONSE

Yes, although, as discussed below, the Committee should also provide local election officials with copies of its Statement of Organization, filed with OCPF, at the time it begins to undertake activity to influence a particular municipal election.

This office has never addressed whether one political committee could organize to support local ballot questions in different municipalities and spanning multiple election cycles.<sup>2</sup> It is therefore important to acknowledge at the outset that, given the unique nature of the CPA and based on the facts you have presented, the Committee and its goals appear to be consistent with the disclosure provisions of the campaign finance law.

Pursuant to M.G.L. c. 55, § 1, a ballot question committee may form to support or oppose a "specific question *or questions* submitted to the voters." And while "ongoing" ballot question committees were not generally contemplated by the campaign finance law, this office has recognized that "there might be certain limited circumstances where a [ballot question] committee is created to promote substantially identical ballot questions in more than one election cycle, where contributors would understand that their contributions may be used to promote or oppose a ballot question in a later election." See AO-93-30.

The purpose of the CPA is to conserve open space, preserve historic buildings and sites, and create affordable housing statewide by providing a financial incentive for cities and towns to raise and spend money for these purposes. Specifically, the measure offers matching funds to communities that establish, by local referendum, a fund for community preservation. See M.G.L. c. 44A. The overall effectiveness of the legislation hinges on its adoption at individual municipal elections.

In this regard, the CPA lends itself to one of the exceptional situations contemplated in AO-93-30 where a single political committee, in this case one organized to promote acceptance of the legislation across the state, would be entitled to raise money to support a number of specific ballot questions and consequently make ballot question expenditures in a series of elections. It is therefore

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<sup>1</sup> Funds raised for a purpose other than to influence CPA elections, such as for education and outreach, including foundation grants, would not be placed in the Committee's account and, therefore, would not appear on these reports.

<sup>2</sup> In AO-01-06, OCPF issued an extensive advisory opinion to the Massachusetts Audubon Society, a member of the Coalition, regarding the Coalition's desire to promote the CPA in local communities. That opinion did not address, however, whether the Coalition could form a ballot question committee to generally raise money to support the CPA statewide.

fitting that the Committee's purpose, as set forth on its Statement of Organization,<sup>3</sup> is "to implement a coordinated strategy designed to encourage [the] adoption of the Community Preservation Act in individual municipalities across the commonwealth of Massachusetts."

In fundraising to support this interest, the Committee must not solicit or receive funds specifically to influence a ballot question in a particular community, or otherwise solicit or receive contributions earmarked for any local CPA ballot question committees that have organized and are fundraising in their own right.<sup>4</sup> In other words, the Committee may not serve as a broker or pass-through for funds meant to influence a specific ballot question. See AO-01-06 (advising Audubon that it must organize a municipal ballot question committee prior to raising money for the purpose of influencing a local election.). This will ensure that potential contributors fully understand that their donations to the Committee may be used to promote the CPA anywhere in the commonwealth or in future elections, as well as make certain that the Committee's fundraising activity remains in compliance with M.G.L. c. 55.

By supporting the CPA statewide, the Committee is obligated to file campaign finance reports in each municipality where the Committee makes an expenditure, allocates resources or otherwise engages in activity to influence the outcome of a particular election. See M.G.L. c. 55, § 18. Operating a phone bank or dedicating staff to influence a municipal election are examples of activities that might not involve a direct Committee expenditure, but would nonetheless require the Committee to file locally.

The Committee must file Form CPF M 102, setting forth all of its campaign finance activity, with the local election official eight days prior to the election and thirty days after, if a town election, or, for city elections, on January 20 of the following year. See M.G.L. c. 55, § 18 (paragraph 2, clause (b) and (e)(2)). The pre-election report will ordinarily be the first Committee report due in a community. Where the Committee commences activity to influence a ballot question during the calendar year preceding the relevant election, however, an initial year-end report must be filed in that municipality on January 20; for example, such a report would be due where a December mailing was sent in anticipation of a March ballot question. See M.G.L. c. 55, § 18 (paragraph 2, clause (h)).

You have also proposed that the Committee file annual reports with OCPF. This option seems preferable to the alternative, which would be to file a year-end report in each municipality where there was activity, because such a report would serve as a comprehensive record of all of the Committee's activity. Moreover, the Committee may use its yearly report to determine the start date of the initial local reports it files during the next calendar year. For instance, the start of the reporting period for each initial local report filed by the Committee in 2002 could be January 1, 2002. Any voter wishing to review past Committee activity could then do so by reviewing the reports on file with this office. To facilitate this, we will post the 2001 and future year-end Committee reports filed with OCPF on our website. The Committee should indicate in its cover memorandum to local election officials that OCPF is the central depository for annual Committee reports, both past and future, and that such reports may be viewed on OCPF's website or may be obtained from OCPF.

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<sup>3</sup> M.G.L. c. 55, § 5 states, "Each political committee shall organize by filing with the director or, if organized for the purpose of a city or town election only, with the city or town clerk, a statement of organization." To the extent that the Committee has organized for the purpose of influencing multiple city and town elections, not simply one, the Committee properly organized by submitting its statement of organization with OCPF.

<sup>4</sup> "Earmarked" contributions, which are funds given "with the intent, expectation or condition that it will subsequently be contributed to or used to support a particular candidate or candidates, or a particular committee or committees," interfere with requirements that contributions be accurately disclosed. See M.G.L. c. 55, §§ 6, 7, 7A & 10 and AO-98-15.

Significantly, the application of the campaign finance law to the Committee and its goals has resulted in a situation where a committee organized with OCPF is subject to local reporting requirements. The consequence of this application is that community residents will not have access to information regarding the Committee until an initial campaign finance report is filed. To avoid this result and minimize voter confusion, we recommend that the Committee provide local election officials with a copy of the Committee's Statement of Organization at the time that the Committee undertakes activity that triggers an obligation to report in that community. Filing this document in advance of the report complies with the spirit of M.G.L. c. 55, §5, which generally requires that Statements of Organizations for municipal elections be filed locally. It will also assist the local election official in determining what disclosure reports should be filed by the Committee.

Please note that this opinion is issued solely in the context of the Massachusetts campaign finance law, M.G.L. c. 55, and based on the representations made in your letter and in conversations with OCPF's staff.

Thank you for your interest in the campaign finance law. Please do not hesitate to contact us if you have any questions regarding this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

MJS:bp